

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DWAYNE PANNELL, Individually and on  
Behalf of All Other Persons Similarly Situated,

Plaintiffs,

-against

DR. JAY'S INC.,

Defendant.

Civil Action No. 07-3503

**ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT,  
CONDITIONALLY CERTIFYING SETTLEMENT CLASS, DIRECTING NOTICE TO  
CLASS, AND SETTING HEARING ON FINAL APPROVAL**

**WHEREAS**, an action entitled DWAYNE PANNELL, Individually and on Behalf of All Other Persons Similarly Situated v. DR. JAY'S INC., Civil Action No. 07-CV-3503 (the "Lawsuit"), is currently pending before this Court;

**WHEREAS**, the parties have made application, pursuant to Rule 23(e), Fed. R. Civ. P., for an order approving settlement of the claims alleged in the Lawsuit, in accordance with a Settlement Agreement dated November 12, 2007 (the "Agreement"), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Lawsuit against Defendant and for dismissal of the Lawsuit against Defendant with prejudice upon the terms and conditions set forth therein, and the Court has read and considered the Agreement and the exhibits annexed thereto; and

**WHEREAS**, all capitalized terms contained and not otherwise defined herein shall have the same meanings set forth in the Agreement.

**IT IS ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007 HEREBY ORDERED AS  
FOLLOWS:**

1. The Court hereby preliminary approves the settlement set forth in the

Agreement as being fair, just, reasonable and in the best interest of Plaintiffs and the Class as described in the Agreement (hereinafter the "Class").

2. The Fairness Hearing shall be held before this Court, on \_\_\_\_\_, at the United States District Court, Southern District of New York, Southern District of New York, 500 Pearl Street, New York, New York 10007 to determine whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Agreement is fair, just, reasonable, adequate and in the best interest of the Class, and should be approved by the Court; whether an Order and Final Judgment of Dismissal, as provided in the Agreement, should be entered; and to determine the amount of attorneys' fees, costs and expenses that should be awarded Plaintiffs' Class Counsel.

3. The Court approves, as to form and content, the Settlement Notice and finds that the mailing and distribution of the Settlement Notice substantially in the manner and form set forth in this Order constitutes the best notice practicable under the circumstances, and constitutes valid, due and sufficient notice to all persons in the Class, complying fully with the requirement of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States and any other applicable laws.

4. Class Members entitled to contest approval of the terms and conditions of the proposed settlement, the judgment to be entered thereon if the same is approved, the attorneys' fees and expenses to be awarded to Plaintiffs' Class Counsel, or any other matter, must cause written objections and the basis therefor (and copies of any supporting papers and briefs) to be physically received at least thirty (30) days before the Fairness Hearing date (the "Objection Deadline") on Justin Zeller, The Law Office of Justin A. Zeller, P.C., 251 West 14<sup>th</sup>

Street, 5<sup>th</sup> Floor, New York, New York 10011, and Jackson Lewis LLP, 59 Maiden Lane, New York, NY 10038, and must physically file said objections, papers and briefs with the Clerk of the United States District Court for the Southern District of New York no later than the Objection Deadline. Any statement of position or objection shall state the objector's name, address, the case number and a statement of the reasons why the objector believes that the Court should find that the proposed Settlement is not in the best interests of the Class. The statement of position shall also identify any and all witnesses, documents, and other evidence of any kind to be presented at the Fairness Hearing in support of the statement of position or objection, as well as the substance of the testimony to be given by any witness. Additionally, any member of the Class who has served and filed objections as set forth in the first sentence of this paragraph, may appear at the Fairness Hearing and show cause to the Court, if he or she has any reason why the proposed settlement of the claims alleged in the Lawsuit should or should not be approved as fair, just, reasonable and adequate, or why a judgment should or should not be entered thereon or why the requested attorneys' fees, costs and expenses, should or should not be awarded as requested. Any member of the Class who does not make his or her objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Agreement, and the award of attorneys' fees, costs and expenses to Plaintiffs' Class Counsel, and the award of incentive payments for Named Class Plaintiff, unless otherwise ordered by the Court.

5. All additional papers in support of the settlement shall be filed and served on all named parties at least two (2) business days before the Fairness Hearing date.

6. Any payments and actions required under the Agreement prior to the Fairness Hearing shall be carried out as set forth in the Agreement.

7. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. Notice of any adjournment can be obtained from Class Counsel: Justin Zeller, The Law Office of Justin A. Zeller, P.C., 251 West 14<sup>th</sup> Street, 5<sup>th</sup> Floor, New York, New York 10011 (phone # 212-229-2249). The Court may approve the settlement, with such modifications as may be agreed to by the settling parties, if appropriate, without further notice to the Class.

ENTER:

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United States District Judge

Dated: \_\_\_\_\_, 2007